

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DAVID L. SCHWAB,

Civil No. 06-1070 (JMR/FLN)

Petitioner,

v.

REPORT AND RECOMMENDATION

R.L. MORRISON, Warden,

Respondent.

This matter came before the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636 and L.R. 72.1(a). Petitioner, a federal prisoner, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. He claims that Respondent has wrongly determined the date when he should be transferred to a Residential Reentry Center (“RRC”), pursuant to 18 U.S.C. §§ 3621(b) and 3624(c). Petitioner is proceeding pro se. The Respondent is represented by the United States Attorney for the District of Minnesota. In April the 8th Circuit Court of Appeals decided *Fults v. Sanders*, 442 F.3d 1088 (8th Cir. 2006), in which it invalidated the rule relied upon by Respondent. To the extent Petitioner seeks an order that the Bureau of Prisons reconsider the length of time Petitioner should be assigned to an RRC pursuant to the factors set forth in 18 U.S.C. §3621(b), the petition should be granted. *See Fults*, 442 F.3d at 1190. To the extent that Petitioner seeks an immediate assignment to an RRC, the petition should be denied.

Dated: May 25, 2006

s/ Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge

Pursuant to the Local Rules, any party may object to this Report and Recommendation by filing with the Clerk of Court and serving on all parties, on or before **June 14, 2006**, written objections which specifically identify the portions of the proposed findings or recommendations to which objection is being made, and a brief in support thereof. A party may respond to the objecting party's brief within ten days after service thereof. All briefs filed under the rules shall be limited to 3500 words. A judge shall make a de novo determination of those portions to which objection is made.

This Report and Recommendation does not constitute an order or judgment of the District Court, and it is, therefore, not appealable to the Circuit Court of Appeals.